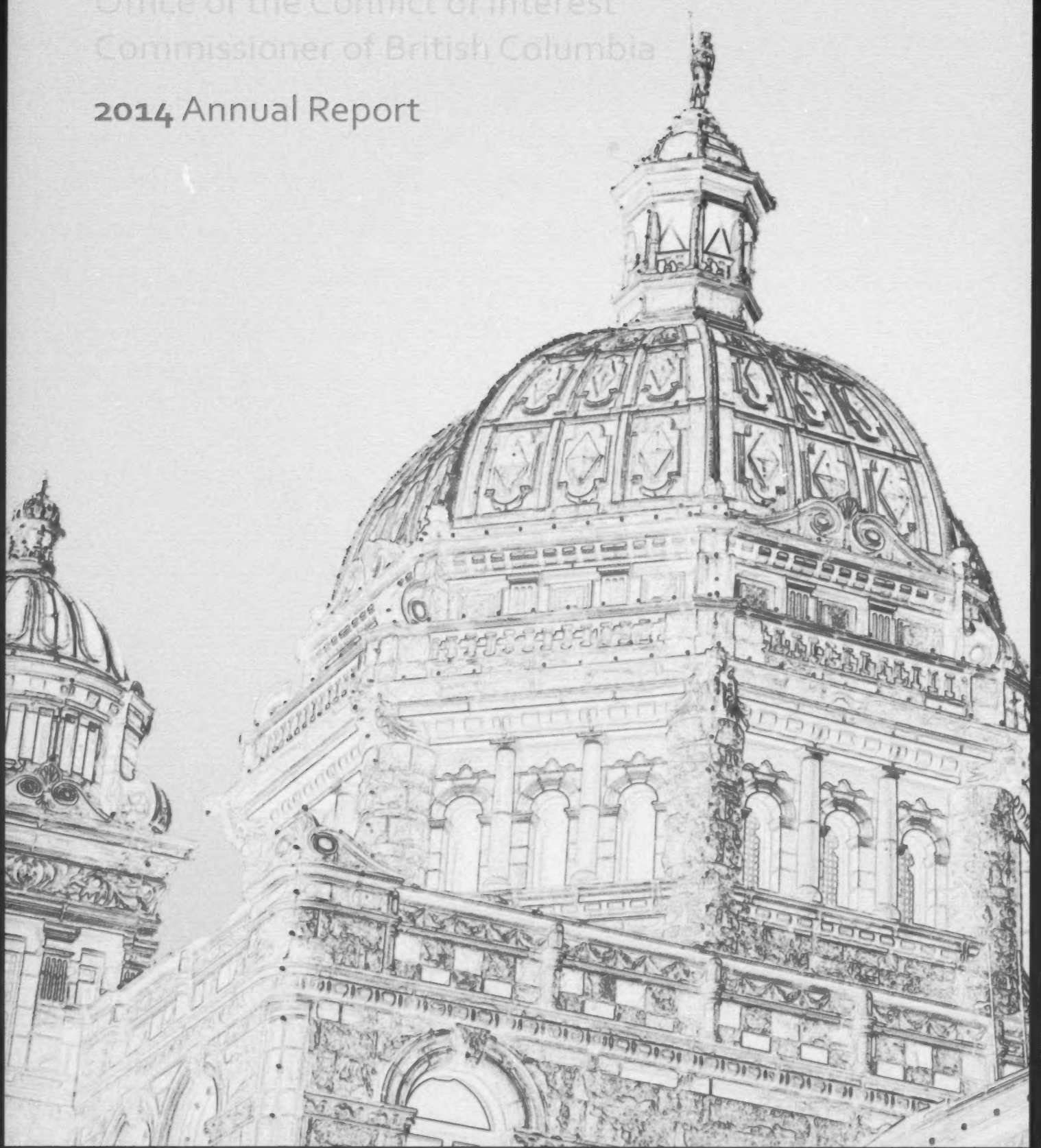
Office of the Conflict of Interest
Commissioner of British Columbia

2014 Annual Report



BRITISH COLUMBIA

Office of the
Conflict of Interest
Commissioner

Paul D.K. Fraser, Q.C.

Annual Report 2014

Office of the Conflict of Interest Commissioner

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Commissioner

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BRITISH
COLUMBIA

June 30, 2015

The Honourable Linda Reid, MLA
Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Madam Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2014.

This Report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act,* Chapter 287 of the Revised Statutes of British Columbia.

Sincerely,

Paul D.K. Fraser, Q.C.
Commissioner

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COMMISSIONER'S MESSAGE

Paul D.K. Fraser, Q.C.

WHILE 2014 WAS a productive and successful year in our Office with the refinement of some of our service offerings to members of the Legislature and to the public, I am very sorry to report that another year has passed without any much needed amendments being made to the *Members' Conflict of Interest Act* (the "*Act*")

A review of the Office's annual reports over the last decade contains repeated suggestions to update the *Act,* based on experience gained in its administration. At the same time, there have been many recommendations for substantive change with respect to the application and reach of the *Act* and advancements that have taken place in other jurisdictions.

Competition for space on the Legislative agenda is always intense, but the unanimous recommendations for change made in the March 2013, Report of the Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills (http://www.leg.bc.ca/cmt/39thparl/session-5/parref/reports/PDF/Rpt-PARREF-39-5-ReviewOfTheMembersConflictOfInterestAct-2013-MAR-14.pdf) represent the most recent considered and convenient agenda for change. I urge the Legislature to get on with the task.

In this annual report we discuss the core provisions of the *Act* and our administrative practices. The approach taken in the *Act* is to require regular disclosure of the nature of member's assets and liabilities - so that members of the public can measure and interpret the decisions taken by their elected legislators, in that context.

We remain committed to ensuring that our website is kept current and that our public outreach continues to expand in order to explain the policy of the *Act* and how it is administered. My thanks to the public for the interest shown in our work and to the members for their co-operation in ensuring that transparency will continue to inform our legislative system.

OVERVIEW

Members of the Legislative Assembly are expected to act in the public interest at all times, and must not use their official position for personal gain or advantage.

HOLDING ELECTED OFFICE is a public trust. The rules governing conflict of interest for Members are set out in the *Act* and ensure that those who are elected to public office are held to high standards of conduct.

A conflict of interest arises when a Member's duty to act in the public interest is or may be affected by his or her private interest. In most cases "private interest" will be pecuniary in nature. However, a private interest can also be non-pecuniary, providing it confers a real and tangible benefit on the Member.

Members must avoid both actual and apparent conflicts of interest, and must arrange their private affairs to prevent such conflicts from arising.

Members are required to resolve any conflicts which do arise promptly and transparently.

In addition to the general prohibition against actual or apparent conflicts of interest, other prohibitions include:

Insider information

A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member's private interest.

Section 4

Influence

A member must not use his or her office to influence a decision, to be made by another person, to further the member's private interest.

Section 5

Extra benefits

A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Section 7

COMMISSIONER'S ROLE

The Conflict of Interest Commissioner is an independent, non-partisan Officer of the Legislative Assembly who is responsible for impartially administering the *Members' Conflict of Interest Act*.

IN BRITISH COLUMBIA, as in most parliamentary democracies, there are several Statutory Officers of the Legislature (such as the Auditor-General) whose work is essential to ensure accountability and promote good governance. However, the Conflict of Interest Commissioner is the only Officer of the *Legislative Assembly*.

The Conflict of Interest Commissioner is dedicated exclusively to the service of the Legislative Assembly itself in respect of Members' conduct expectations and discipline.

As a result, the records contained in our Office remain confidential as part of the legislative privilege which we enjoy as a matter of law.

The Commissioner has three primary roles:

PROVIDE ADVICE AND OPINIONS	OVERSEE DISCLOSURE PROCESS	RESPOND TO ALLEGATIONS
Provide confidential advice to Members about their obligations under the *Act*	Meet with each Member at least annually to review the disclosure of the Member's financial interests	Respond to allegations that the *Act* has been contravened, and conduct an Inquiry if warranted

ADVICE AND OPINIONS

The focus of the Commissioner's work is to help Members understand their obligations under the *Act* and provide guidance to prevent conflicts of interest from arising or persisting.

ARGUABLY, THE COMMISSIONER'S most important function is his **advisory role.**

Under section 18 of the *Act*, Members may request that the Commissioner provide a formal written opinion on a conflict of interest matter, and are encouraged to do so if in any doubt about their obligations under the *Act*. This advice remains confidential unless the Member decides to release it. The Commissioner is also available to provide confidential oral advice to Members.

If the Commissioner determines that a Member has or may have a conflict of interest, he can make recommendations and specify a timeframe for compliance.

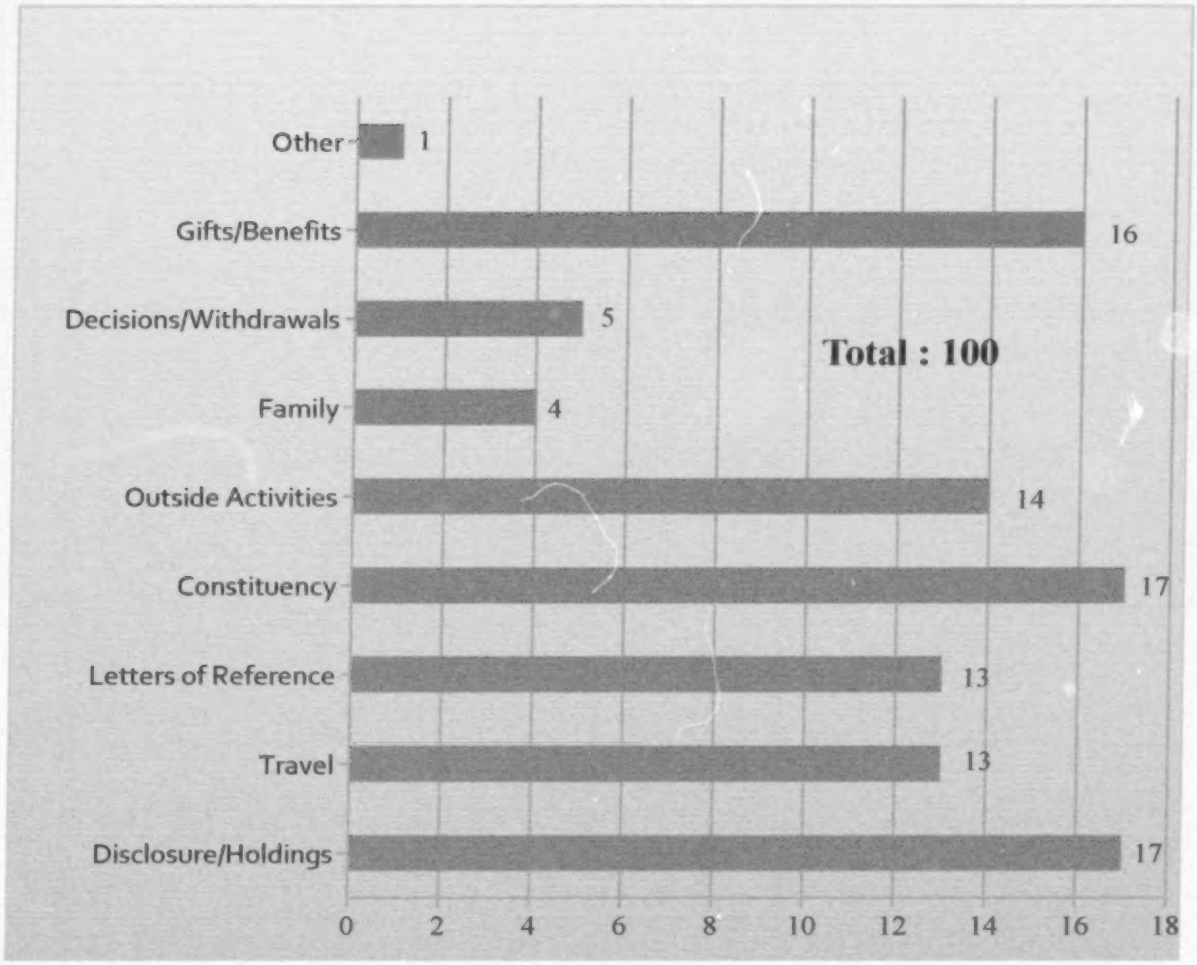
Our Office receives a great variety of requests for advice from Members and their staff. Some requests are informal and do not proceed beyond the initial phone call or email to the Commissioner. Others are more substantial and may involve multiple communications back and forth with the Member, require background research, and result in a written response.

IN ADDITION TO responding to requests for advice in relation to specific matters, we frequently provide general information to Members about their obligations and provide assistance with disclosure, reporting and procedural matters.

The Commissioner also engages in numerous outreach interactions and exchanges with Members throughout the year. From time to time, prospective candidates for provincial office seek information about their obligations should they be elected.

A breakdown by topic of the requests for advice received in 2014 is shown below:

Requests from Members for Advice



Time to respond to Requests from Members for Advice

Median	Average
2 business days	5 business days

DISCLOSURE PROCESS

Members are required to disclose the nature of their assets, liabilities and financial interests.

EVERY MEMBER MUST, within 60 days of being elected, and after that annually, file with the Commissioner a **Confidential Disclosure Statement** ("CDS"), which contains a statement of the nature of the assets, liabilities and financial interests belonging to the Member and his or her spouse.

Separate disclosure forms are required if the Member has any minor children, and if the Member, his or her spouse or minor child, has a controlled private corporation. The content of the CDS is proscribed by the regulation to the *Act*. Members' completed CDSs remain securely and exclusively within our Office.

Members must disclose the nature of the assets, liabilities and financial interests, not the value nor the amount or worth of those interests. A key difference between British Columbia and many other jurisdictions is that under British Columbia's legislation, disclosure statements are qualitative rather than quantitative.

Once the Member's confidential disclosure forms have been received and reviewed by our Office, a meeting between the Member and the Commissioner is arranged.

In 2014, disclosure meetings were held in Victoria and Vancouver from September to November.

ONCE THE CONTENTS of the confidential statements have been finalized and acknowledged to be accurate, **Public Disclosure Statements** ("PDS") are prepared by our Office.

The PDS contains most, but not all of the information contained in the Member's confidential disclosure statement, as well as a statement of any gifts or benefits that have been disclosed to the Commissioner since the Member's last filing.

Members' PDSs are all filed together on the same date with the Clerk of the House, where they are available for public inspection.

Members' 2014 PDSs were filed on November 29, 2014.

ONGOING DISCLOSURE OBLIGATIONS

Throughtout the year, Members must report "material changes"and receipt of certain gifts and personal benefits.

MATERIAL CHANGES

AFTER MEMBERS HAVE filed their annual confidential disclosure statements, they have an ongoing obligation to report any material changes to their financial interests within **30 days** of the change occurring.

After reviewing the Member's material change form, our Office prepares a Notice of Material Change which is then filed with the Clerk of the Legislative Assembly, where it is filed with the Member's most recent PDS. A copy of the Notice is also sent to the Member.

*A **"material change"** is defined as an acquisition or disposition, whether in whole or in part, occurring after the Member has filed a disclosure statement, of any asset, liability, financial interest or source of income by the Member, his or her spouse or minor children, or a private corporation controlled by any of them, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.*

GIFTS AND PERSONAL BENEFITS

MEMBERS ARE PROHIBITED from acceptng gifts or personal benefits in connection with the performance of their official duties. However, there is an exception for gifts or personal benefits received "as an incident of protocol or social obligations". In most cases this means a token expression of appreciation or complimentary hospitality in the context of some official interaction.

Before accepting a gift, Members must consider whether accepting the gift would - or would appear to - place the Member under an obligation to the donor.

Members are required to disclose and provide details of any gift or personal benefits they have received if the value of the gift exceeds $250, or if the combined value of multiple gifts from the same donor exceeds $250 in a twelve month period. A summary of gifts received is included in the Member's PDS.

ALLEGATIONS CONCERNING MEMBERS

The Commissioner may conduct an Inquiry into allegations that a Member has breached the *Act*.

THE MEMBERS' CONFLICT of Interest Act concerns itself with the specialized issue of real and apparent conflict of interest. The policy of the *Act* is to ensure that Members do not advance (or are not perceived to advance) their private interest or use their office for their own private gain.

Under section 19 of the *Act*, the Commissioner may provide an opinion about a Member's compliance with the *Act* or section 25 of the *Constitution Act* in response to a request from a member of the public, a Member of the Legislative Assembly or Executive Council, or the Legislative Assembly.

"...decisions made by the Commissioner in the carrying out of the Commissioner's powers under the Act are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts."
Tafler, 1998 (BCCA)

Typically, when concerns about a Member's compliance are brought to his attention, the Commissioner first gathers information informally to determine if there are reasonable and probable grounds to support the allegations. The Commissioner then determines whether to proceed to the formal Inquiry stage or dismiss the allegations as unwarranted.

If a Member is found in contravention of the *Act*, the Commissioner may recommend a penalty, which may include a reprimand, suspension, fine of up to $5,000 or a declaration that the Member's seat be declared vacant until an election is held in the Member's electoral district. While the Commissioner may recommend penalties against a Member, it is up to the Legislative Assembly to accept or reject the recommendation.

Formal Requests for Opinions (section 19)

From MLAs	0
From public (jurisdictional)	3
From public (non-jurisdictional)	4
TOTAL	7

Formal opinions issued under sections 18 and 19 of the *Act*.

OPINION CONCERNING PAT PIMM, MLA

AUGUST 30, 2014

Section 18

"A member may request, by application in writing, that the commissioner give an opinion or recommendation on any matter respecting the obligations of the member under this Act or under section 25 of the Constitution Act."

Mr. Pat Pimm, MLA for Peace River North, asked for the Commissioner's opinion on whether he had acted inappropriately in his support of a constituent in a matter before the Agricultural Land Commission (the ALC), an administrative tribunal responsible for oversight of the Agricultural Land Reserve in British Columbia, both prior to and after his appointment as Minister of Agriculture.

Mr. Pimm requested the Commissioner's opinion as a result of various negative comments published by the ALC and a number of media reports that called into question the propriety of his involvement in the matter. The request engaged section 6 of the *Act*, which provides that the *Act* "does not prohibit the activities in which members normally engage on behalf of constituents".

The Commissioner concluded that while *Ministerial* involvement in a matter before an administrative tribunal is always inappropriate, it is not reasonable to subject *Private Members* to the same restrictions.

Taking a proportionate approach, the Commissioner advised that MLAs can engage in activities on behalf of their constituents where the tribunal is gathering information to inform its deliberations but should cease making representations once the deliberative stage has begun. Members should also review the tribunal's basic legislative framework to ensure that they do in fact have something useful to contribute to the process and be sensitive to the political context and whether there are broader issues that would make their involvement contentious or improper.

The Commissioner determined that Mr. Pimm's actions while he was MLA were within the scope of activities that Members normally engage on behalf of constituents, and did not offend the *Act*. The Commissioner also found that Mr. Pimm had not made any inappropriate representations to the ALC while Minister, nor did he or his staff attempt to influence the ALC or intend to interfere with its processes.

OPINION CONCERNING CHRISTY CLARK, PREMIER

Sub-section 16(1)

"Every member must, within 60 days of being elected, and after that annually, file with the commissioner a confidential disclosure statement in the form prescribed by the regulations."

IN APRIL 2014, questions were raised in the media and in the Legislative Assembly about the Premier's past involvement with RCI Pacific Gateway Education Inc. ("PGE"). According to reports, the Premier agreed to be a director of the company in 2007. At that time, she was not a Member of the Legislative Assembly. The Premier was sworn in as the Member for Vancouver-Point Grey on May 30, 2011.

The President of PGE indicated that the company was inactive between 2007 and May 16, 2011, when it officially wrapped up. He also stated that shortly after being hired, the Premier left to pursue another venture.

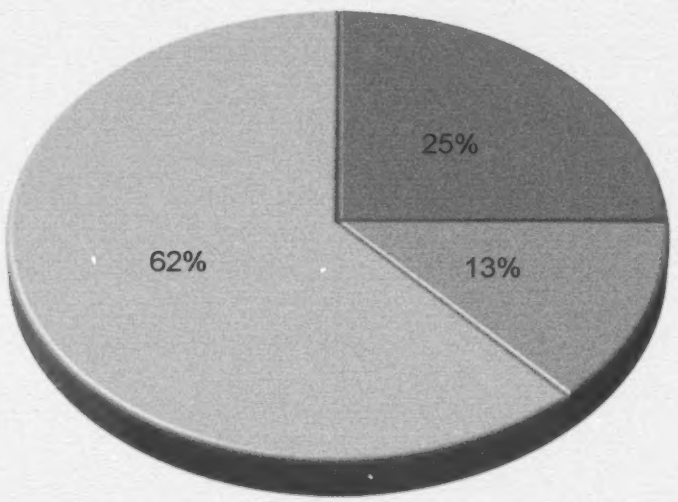
The Premier was quoted in the media as saying she would ask the Commissioner for an opinion about the formal role she held as a Director of PGE, as allegations had been raised that she should have disclosed her prior involvement with the company when she became Premier.

The Commissioner wrote to the Premier's Chief of Staff to advise that his supervisory disclosure jurisdiction under the *Act* is restricted to the conduct of Members after their election to the Legislative Assembly. As the alleged activity took place several years before the Premier was elected, the Commissioner had no jurisdiction to issue an opinion on the matter.

The Commissioner and staff engage in a variety of communications, outreach and other activities throughout the year.

THROUGHOUT THE YEAR, our Office responds to many requests for general information from Members, their staff, the media and the general public. When we receive requests that relate to matters beyond the Commissioner's jurisdiction, we do our best to refer individuals to the appropriate agency.

Requests for Information



MLAs	Media	Public
15	8	37
	Total:	**60**

In most cases we are able to respond to requests for information on the same day.

CCOIN

OUR OFFICE IS an active member in the Canadian Conflict of Interest Network (CCOIN), an organization that brings together Commissioners and professional colleagues from all the parliamentary and legislative jurisdictions in Canada. CCOIN members meet annually to exchange information and learn about best practices and developments in their respective jurisdictions.

In 2014, the annual CCOIN Conference was held in Winnipeg, Manitoba from September 3-5. Delegates from across the country discussed the importance of independence, gifts, the role of political staffers and "non-financial" conflicts of interest. Paul Thomas, Professor Emeritus, Political Science, University of Manitoba, presented on the topic of Ethics in Government.

The 2015 Conference will be held in Quebec City from September 2-4.

PRESENTATIONS

Each year the Commissioner meets with Legislative Interns who have been selected for the BC Legislative Internship Program. The Program has been sponsored for more than 35 years by the Legislative Assembly and the exchange is a valuable experience for both the Commissioner and the Interns.

The Commissioner also presented to university students in the Political Science program at Simon Fraser University, and participated in a panel before the Senate Standing Committee on Rules, Procedures and the Rights of Parliament as part of its review of Bill S-207, *An Act to amend the Conflict of Interest Act (gifts).*

Additionally, staff met with academics and legislative representatives from Australia researching comparative ethics and conflict of interest regimes.

BULLETINS

From time to time, the Commissioner issues interpretive memos and other publications which provide guidance on specific conflict of interest issues. In 2014, the Commissioner issued an Information Bulletin on the topic of Sponsored Travel, which is available on our website at:
http://www.coibc.ca/down/bulletins/sponsored_travel_bulletin.pdf

AMENDMENTS TO THE ACT

As noted in previous annual reports, amendments to the *Act* are long overdue. The Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills (the "Committee") reviewed the *Act* in 2012 and issued its report in 2013.

The Committee made a total of 34 recommendations to amend the *Act*. As no legislative action has yet taken place, our priority for 2015 will be to continue our efforts to work with the Government to move the legislative process forward.

WEBSITE

In recent years, the Office has made several improvements and updates to our website. In addition to providing general information about the Office and the role of the Commissioner, Members' blank forms are accessible as are all previous annual reports, ethics bulletins, publicly released opinions and news releases.

We hope to further improve the website by modernizing its look and making it more user-friendly, for the public as well as for Members.

We will continue to add new ethics bulletins throughout the year as they are issued.

25TH ANNIVERSARY CELEBRATION

We are looking forward to celebrating the 25th anniversary of the passage of the *Act* and the founding of the Office, which will take place in 2016.

To commemorate this important milestone, our Office will commence planning in the latter part of 2015 for an event to take place in the early months of 2016.

BUDGET SUMMARY

FOR FISCAL YEAR 2014/15, we received a budget appropriation of $567,000. The actual cost of our operations for the year was $537,350.

Our Budget Proposal for 2015/2016 - 2017/18, presented to the Select Standing Committee on Finance and Government Services (the "Committee") on November 25, 2014, sought an annual budget of $567,000. The Commissioner also requested an annual $25,000 capital allowance to be used on an as-needed basis, to be used primarily for computer upgrades. The Committee approved both the annual budget and the provision of an annual capital allowance.

TRAVEL EXPENSES

The Commissioner's travel expenses are now posted on our website and updated on a quarterly basis, available at http://www.coibc.ca/admin.htm

ACCOUNTABILITY

The Office is accountable for its operations through the issuance of the annual report and the annual budget presentation to the Committee.

In his presentation before the Committee, the Commissioner noted that most of the statutory offices do not have the opportunity to report to a parliamentary committee outside of the fall budget review process. He suggested the establishment of a new standing committee empowered to meet with statutory officers at other times throughout the year. More regular meetings would encourage a better exchange of information and allow for a more comprehensive budget review process, as well as provide opportunities for each statutory officer to provide updates and raise any other matters of importance.

The Committee agreed that it should have a more frequent and regular reporting relationship with all of the statutory offices, as additional meetings held at other times of the year would provide a forum for broader discussion of annual reports and service plans separate from the budget review process.

ACKNOWLEDGEMENTS AND APPRECIATION

We look forward to our continuing work in the service of the public and the Legislative Assembly of British Columbia.

ACKNOWLEDGEMENTS

TECHNICAL SUPPORT TO our Office is provided by the Legislative Assembly Information Technology Branch (LAITB). Many thanks to the LAITB staff for their expert advice and assistance with our day to day technology needs, as well as support for our ongoing projects. We are also grateful to the Ministry of Finance (Corporate Financial Services and Facilities Branch) which provides financial services assistance, and to the Speaker and the Clerk of the House and their respective Offices, as well as the Caucus Chairs and their assistants.

OFFICE COLLEAGUES

Linda Pink, *Executive Coordinator*

Ms. Pink has been the operational manager of the Office since November 2012. Her experience in senior administrative positions within the public service informs her work and benefits the Office. She is well known and highly regarded within the Legislative precinct as a wise and helpful colleague possessed of both common sense and a friendly manner. We are fortunate to have Ms. Pink as our administrative leader.

Alyne Mochan, *Legal Officer*

Ms. Mochan has been our talented and diligent Legal Officer since 2011. She is an important member of our team, as well as a valuable resource for the work of CCOIN - where she has earned the respect and gratitude of our colleagues around the country.

Amber Derricourt, *Executive Administrative Assistant*

Ms. Derricourt is the very able public voice and face of the Office - dealing on a daily basis with enquiries about our work from members of the public and MLAs. We are pleased that Ms. Derricourt will be expanding her role and taking on additional administrative responsibilities.

Corey Ulmer, *Projects Officer*

Ms. Ulmer acted as the Projects Officer from 2011-2014, leading a variety of changes to our technical support systems. As a result of her good work, we have enhanced our ability to deliver quality services to the public and MLAs. As the special projects have now been completed, Ms. Ulmer is moving on to other challenges. We wish her luck and thank her for her valuable contributions to our work over the years.

Annual Report 2014

Office of the Conflict of Interest Commissioner